

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM L. LOWRIE,

Plaintiff-Appellant,

v

KAREN A. LOWRIE,

Defendant-Appellee.

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UNPUBLISHED

September 23, 2008

No. 278081

Mason Circuit Court

LC No. 02-000538-DO

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

This case is before us following a remand to the circuit court. *Lowrie v Lowrie*, unpublished per curiam opinion of the Court of Appeals, issued October 18, 2005 (Docket No. 256631). In the prior opinion, this Court vacated the trial court's judgment of divorce and directed the court to reconsider the division of the parties' social security benefits. The Court also allowed the court to reconsider how it addressed the parties' IRAs, plaintiff's inherited investment account, and expenses plaintiff incurred during the pendency of the divorce proceedings. On remand, the trial court designated its award of social security benefits as spousal support rather than a distribution of marital property and it reinstated its original property division. Plaintiff appeals and, for the reasons set forth below, we affirm.

Plaintiff claims that the trial court erred because it failed to follow this Court's instructions. Whether a court followed an appellate ruling on remand is a question of law that this Court reviews de novo. *Kalamazoo v Dep't of Corrections*, 229 Mich App 132, 134-135; 580 NW2d 475 (1998). "A ruling by this Court binds the trial court on remand, pursuant to the law of the case doctrine." *Sumner v Gen Motors Corp (On Remand)*, 245 Mich App 653, 661; 633 NW2d 1 (2001). Thus, "a trial court may not take any action on remand that is inconsistent with the judgment of the appellate court." *Kalamazoo, supra* at 135. This rule applies regardless of whether the appellate court's decision was correct, unless an intervening change in the law occurs. *Sumner, supra*, at 662.

The court's decision to award social security as spousal support was sanctioned by the prior opinion. The Court specifically granted the trial court the discretion to make such an award

when it stated that “the trial court may take into consideration the parties’ social security benefits” when considering spousal support. *Lowrie, supra* at p 3. This Court supported this assertion with citation to an Illinois case interpreting the Social Security Act<sup>1</sup> to allow division of social security benefits as spousal support. *Id.*, citing *In re Marriage of Hulstrom*, 32 Ill App 3d 262; 794 NE2d 980 (2003). This is exactly the course of action the trial court took here.

Further, we hold that the trial court properly reinstated the other awards. In the prior opinion, this Court vacated the other awards to “allow the trial court to reconsider them because, had the court originally taken the position that the social security benefits were not subject to division, it possibly would have impacted the court’s decision regarding the” other awards. *Lowrie, supra* at p 1. Because the trial court awarded social security benefits as spousal support in the same proportion as before, the other awards are not impacted. The prior opinion envisioned this result and it is plain that the court’s determination was consistent with this Court’s guidance. See *Kalamazoo, supra* at 135.<sup>2</sup>

Plaintiff complains that the court’s division of social security benefits was a de facto division of property that violates the federal Constitution’s Supremacy Clause, US Const, art 6, cl 2, and the Social Security Act. As this Court acknowledged in *Lowrie*, the Social Security Act prohibits the alienation of social security benefits as a division of property. 42 USC 407(a) provides as follows:

The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

However, this Court noted in the prior opinion that “42 USC 659(a)’s alimony exception to anti-alienation rule of 42 USC 407(a) renders ‘the settlement agreement’s purported division of social security benefits valid only if the parties intended the transfer to be maintenance rather than property division’”. *Lowrie, supra* at p 3 (citation omitted). The division of the parties’ social security benefits was not a de facto property division. Rather, it is clear from the trial court’s amended judgment of divorce that it intended to divide the benefits as a form of spousal support. Specifically, the court stated:

IT IS FURTHER ORDERED AND ADJUDGED, pursuant to the remand guidance and instruction from the Court of Appeals that Social Security benefits *cannot be divided* as part of a *property division*, but “as to spousal support, the

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<sup>1</sup> 42 USC 401 *et seq.*

<sup>2</sup> The fact that the judgment after remand does not specifically reference the principles of law advised by this Court does not amount to error. Moreover, the court acknowledged these principles in its prior divorce opinion, indicating that it was cognizant of them and had applied them.

Trial Court may take into consideration the parties' Social Security benefits" . . . , and that Plaintiff shall pay Defendant *spousal support* as follows in order to equalize the parties' incomes . . . . [Emphasis added.]

Plaintiff takes issue with the fact that the trial court reinstated the same division of the benefits as it had in its original order, but such a division is proper as long as the benefits are allocated as a form of spousal support. See *Evans v Evans*, 111 NC App 792, 799; 434 SE2d 856 (1993) (upholding judgment requiring plaintiff to pay alimony in the form of a percentage of plaintiff's social security benefits).

Plaintiff contends that the trial court erred when it again awarded a portion of plaintiff's inheritance to defendant, when it declined to equalize the parties' IRAs, and because it refused to compensate plaintiff for living expenses incurred during the pendency of the divorce. For purposes of addressing plaintiff's arguments, we set forth the general principles regarding the division of marital property.

The first step in dividing property in a divorce proceeding is determining which assets are marital property and which assets are separate. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). Marital property is that which came to either party because of the marriage. *Reeves v Reeves*, 226 Mich App 490; 575 NW2d 1 (1997). A court's goal when allocating marital property is to divide it equitably between the parties. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). A court need not achieve mathematical equality when dividing marital property, but should clearly explain any extreme divergence from congruence. *Id.* at 114-115. When dividing the estate, a court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance. *Sparks v Sparks*, 440 Mich 141, 159; 485 NW2d 893 (1992). Each of these factors need not be given equal weight as their relevance will vary from case to case. *Id.*

The trial court did not err when it awarded defendant a portion of plaintiff's inherited property. Inherited property that is held separately from marital property is generally considered separate property and generally should not be invaded. *Dart v Dart*, 460 Mich 573, 584-585; 597 NW2d (1997). However, as this Court noted in the prior appeal, this general rule is subject to certain exceptions, including circumstances in which marital assets are insufficient for suitable support and maintenance, MCL 552.23(1), and when the non-inheriting spouse made a contribution to the acquisition, improvement, or accumulation of property, MCL 552.401. Although the trial court did not provide its reasoning in the amended judgment of divorce regarding invading the inheritance, it did justify the invasion under MCL 552.21(1) both in its earlier divorce opinion and at a motion hearing prior to remand.

Applying the principles of equity, the court awarded defendant part of this asset because both parties reasonably anticipated that such an inheritance would be available for retirement purposes and it was necessary to sustain defendant's standard of living during retirement. More specifically, the court found that defendant "found herself facing retirement with limitations that had not otherwise been anticipated, and so she had not created a nest egg for her own benefit." Based on our review of the record, we do not believe that the trial court was mistaken with respect to these factual findings and we think the court appropriately focused on the relevant

factors under *Sparks*. See *Reed, supra* at 150. In light of all the surrounding circumstances, the court's dispositional ruling on this matter was fair and equitable. *Id.*<sup>3</sup>

We also hold that the trial court correctly chose not to equalize the parties' IRAs. The court decided not to equalize the accounts because the parties had both invested an equal amount in the same, but separate, stocks and plaintiff later, in an independent decision, made a poor investment choice when he changed his investment. The trial court focused on general principles of equity and the circumstances under which the parties invested in their respective IRAs, both factors relevant to determining the division of marital property. *Sparks, supra* at 159-160.

Lastly, the trial court did not err with respect to its decision not to reward plaintiff living expenses for the period between the time plaintiff filed for divorce and defendant left the marital home. In deciding that plaintiff was not entitled to any credit, the court considered the duration of the marriage, the necessities and circumstances of the parties, their earning abilities, their past relations and conduct, and general principles of equity. See *Sparks, supra* at 159-160. When dividing property in a divorce proceeding, a court is entitled to consider a parties conduct. *McDougal v McDougal*, 451 Mich 80, 88; 545 NW2d 357 (1996). However, a court must consider all relevant factors when dividing property and should not give disproportionate weight to any one factor, keeping in mind that the purpose in dividing property is not to punish either of the parties. *Id.*

Under the circumstances, the court's decision not to credit plaintiff with compensation for living expenses did not amount to punishment. It does not appear from the court's reasoning that it placed undue emphasis on defendant's conduct in ending the marriage. The court also looked to a number of other factors, including defendant's willingness to give plaintiff the marital home, defendant's housekeeping duties during the pendency of the divorce, the fact that defendant would have to start a new life for herself, and that plaintiff was already self-employed. In light of all the facts and circumstances, the court's decision was fair and equitable.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Jane M. Beckering

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<sup>3</sup> Plaintiff's reliance on *Davey v Davey*, 106 Mich App 579; 308 NW2d 468 (1981), is misplaced because the present matter is distinguishable from that case. In *Davey*, the plaintiff received a \$50,000 inheritance from her aunt after she filed for divorce. *Id.* at 582. Both parties had an equal earning capacity. *Id.* The Court found that the division of marital assets was sufficient to support the standard of living the defendant had enjoyed during the marriage and that invasion of the inheritance was not necessary. *Id.* at 583. In this case, defendant and plaintiff do not have equal earning capacities and during the marriage the parties had consistently benefited from the generosity of plaintiff's parents. Both parties had a certain expectation for the standard of living that they would enjoy during retirement based on plaintiff's anticipated inheritance.